UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

Angel Nieves,		Civil Action No.:
	Plaintiff,	•
v.	:	
Rite Aid Corporation,		COMPLAINT
	Defendant.	
	:	

For this Complaint, the Plaintiff, Angel Nieves, by undersigned counsel, states as follows:

JURISDICTION

- 1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et. seq. (the "TCPA").
- 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

- 3. The Plaintiff, Angel Nieves ("Plaintiff"), is an adult individual residing in Philadelphia, Pennsylvania, and is a "person" as defined by 47 U.S.C. § 153(10).
- 4. The Defendant, Rite Aid Corporation ("RAC"), is a Pennsylvania business entity with an address of 30 Hunter Lane, Camp Hill, Pennsylvania 17011, and is a "person" as defined by 47 U.S.C. § 153(10).

FACTS

- 5. Beginning in or around October 2013, Defendant started placing multiple calls to Plaintiff's cellular telephone, number 215-xxx-0192.
- 6. At all times mentioned herein, Defendant contacted Plaintiff using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.
- 7. Plaintiff has no prior business relationship with Defendant and never provided his consent to be contacted on his cellular phone.
- 8. Defendant's ATDS calls were not intended for Plaintiff. When Plaintiff answered the calls, he heard a pre-recorded message stating, "This message is for Brenda Lee. Your prescription is ready..."
- 9. To date, Plaintiff has received approximately 32 such ATDS calls to his cellular telephone.

COUNT I

<u>VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, ET SEQ.</u>

- 10. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 11. Without prior consent the Defendant contacted the Plaintiff by means of automatic telephone calls or prerecorded messages to his cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).
- 12. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

13. The calls from Defendant to Plaintiff were not placed for "emergency purposes"

as defined by 47 U.S.C. § 227(b)(1)(A)(i).

14. As a result of each call made in negligent violation of the TCPA, Plaintiff is

entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA

pursuant to 47 U.S.C. § 227(b)(3)(B).

15. As a result of each call made in knowing and/or willful violation of the TCPA,

Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47

U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

1. Statutory damages of \$500.00 for each violation determined to be negligent

pursuant to 47 U.S.C. § 227(b)(1)(A);

2. Treble damages for each violation determined to be willful and/or knowing

pursuant to 47 U.S.C. § 227(b)(3)(C); and

3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: March 17, 2014

Respectfully submitted,

By /s/ JBB8445

Jody B. Burton

Bar No.: 71681

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3